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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JAMES ALEXANDER

on

Habeas Corpus.

D058888

(San Diego County
Super. Ct. No. CRN8405)

Petition for writ of habeas corpus. Relief granted.

On October 1, 1984, petitioner was convicted of second degree murder and first degree burglary. The court sentenced him to prison for 15 years to life with an additional two-year enhancement for use of a firearm. He also received a 16-month consecutive sentence for the burglary conviction. On appeal, we affirmed the second degree murder conviction but reversed the first degree burglary conviction due to insufficient evidence. (*People v. Alexander* (Oct. 17, 1984, D002343) [nonpub. opn.])

Petitioner became eligible for parole on December 13, 1993. For the last five years, petitioner's pursuit of parole has endured a complex history. The Board of Parole Hearings (Board) found him suitable for parole on January 25, 2006, January 9, 2007 and January 2, 2008. The Governor reversed the Board's decision on each of these occasions. The superior court granted habeas relief from the Governor's reversal of the January 9,

2007, grant of parole. The People appealed, and this court reversed the superior court's decision. (*In re Alexander* (June 11, 2009, D054121) [nonpub. opn.].) Meanwhile, petitioner had *another* parole suitability hearing before the Board. Because the decision was split, the Board heard the matter en banc. On March 17, 2009, the Board found petitioner unsuitable for parole.

Petitioner challenged the Governor's 2008 reversal and the Board's 2009 decision in the superior court. On November 15, 2010, the superior court granted habeas relief, concluding that neither decision was supported by "some evidence" that petitioner remains currently dangerous. Thus, the court "remanded to the [Board] without limitation to permit the executive branch to exercise its statutory and constitutional authority over parole decisions pursuant to *In re Prather* (2010) 50 Cal.4th 238, 257." The People did not appeal the superior court's order granting relief.

Here, petitioner contends that he is entitled to further relief than the superior court granted. Petitioner contends that there is no need to specially remand this case to the Board for another hearing because the Board always remains free to impact petitioner's release by initiating parole rescission proceedings if it determines there is cause to do so. Petitioner therefore contends this court should vacate the Governor's 2008 reversal and reinstate the Board's January 2, 2008, decision finding petitioner suitable for parole. Respondent agrees.

Under the circumstances of this case, we conclude the relief agreed upon by the parties is appropriate. (See *In re Vasquez* (2009) 170 Cal.App.4th 370, 387.)

Accordingly, we vacate the Governor's 2008 reversal decision and reinstate the parole

date calculated by the January 2, 2008, Board decision for its terms to be carried out in accordance with due process. As the parties agree, this disposition "affords the Board the opportunity to initiate proceedings to address any evidence of unsuitability that might have occurred to the present, for such proceedings are authorized by regulation and statute and hence accord with due process."

Respondent waives any requirement of this court to issue a formal order to show cause before granting this specific relief. Indeed, no purpose would be served by issuing an order to show cause under the posture of this case. (See *People v. Romero* (1994) 8 Cal.4th 728, 740, fn. 7 [court may grant relief without issuing an order to show cause where petitioner's custodian stipulates to the requested relief].)

DISPOSITION

The petition for writ of habeas corpus is granted. The Governor's 2008 reversal decision is vacated. The parole date calculated by the January 2, 2008, Board decision is reinstated. In the interests of justice, this decision is made final as to this court five days from the date of filing.

HALLER, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.